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INDEPENDENT STATE AUDITOR'S REPORT

ON CERTAIN ACTIVITIES OF THE

MASSACHUSETTS CONVENTION CENTER

AUTHORITY

JULY 1, 2001 TO MARCH 31, 2003

**OFFICIAL AUDIT
REPORT
OCTOBER 28, 2003**

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The Massachusetts Convention Center Authority was established by Chapter 190 of the Acts of 1982 (subsequently amended by Chapter 23 of the Acts of 1998) to acquire and operate the John B. Hynes Veterans Memorial Convention Center and the Boston Common Parking Garage and oversee the construction, financing, and operation of the Boston Convention and Exhibition Center and the Springfield Civic Center. The purpose of our review was to determine the efficiency and effectiveness of the Authority's operations, review and analyze selected internal management controls, and update the status of prior audit results.

AUDIT RESULTS

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1. NONCOMPLIANCE WITH COMPETITIVE PROCUREMENT PROCEDURES FOR CONSULTANTS

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The Authority has adopted policies and procedures for procuring contracts in excess of \$25,000 in accordance with Chapter 30B of the Massachusetts General Laws (the Uniform Procurement Act), which requires formal advertised competition. However, our review found that the Authority does not always comply with its procurement policies and procedures.

The Authority has entered into consulting contracts with five individuals, essentially forming a consulting team, to manage the major construction projects in progress: the Boston Convention and Exhibition Center and the Springfield Civic Center. These contracts were executed between March 30, 2001 and September 24, 2001 and expire upon completion of the projects (on or about April 1, 2005). The amounts to be paid under each contract were determined through negotiations between the Authority and the consultants; the total cost of the combined contracts is approximately \$3.2 million for the four-year period. The Authority did not conduct a formal search for the individuals retained under these contracts, nor did it employ any formal competitive process to ensure that the best possible contractors were retained at the most reasonable cost.

2. PRIOR AUDIT RESULTS RESOLVED

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Our prior audit report noted that the Authority had (a) awarded its food and beverage concession agreement for the period ended December 31, 1999 without a competitive process, and selected legal services were also not competitively bid; (b) expended \$267,266 in a buyback vacation program that was not approved by its Personnel Policies Manual; and (c) maintained deficient controls over fixed asset inventory. Our follow-up review found that the Authority has resolved these issues.

INTRODUCTION

Background

The Massachusetts Convention Center Authority was established by Chapter 190 of the Acts of 1982 and Chapter 152 of the Acts of 1997 (subsequently amended by Chapter 23 of the Acts of 1998) to acquire and operate the John B. Hynes Veterans Memorial Convention Center and the Boston Common Garage and oversee the construction and financing of other convention and exhibition centers in the Commonwealth. The Acts of 1997 appropriated \$609,400,000 for the Commonwealth's share of the planning, financing, development, and construction of the Boston Convention and Exhibition Center project and \$48,500,000 for the expansion, renovation, and construction of a civic convention center on the site of the present Springfield Civic Center.

The Authority's Board consists of 13 members. Nine members are appointed by the Governor; one must be appointed from a list of three nominees submitted by the Massachusetts Visitors Industry Council, one must be appointed from a list of three nominees submitted by the Massachusetts Lodging Association, one must be a resident of the City of Cambridge, and one must be a resident of Hamden County. Two members are appointed by the Mayor of Boston, one of whom must be a resident of South Boston. The remaining two persons are the Secretary of Administration and Finance for the Commonwealth, or his/her designee, and the Collector-Treasurer of the City of Boston, or his/her designee; both serve ex-officio and each has a right to exercise his/her vote on matters before the Authority. The Board members serve at the pleasure of, and may be removed by, the officials who appointed them. The Governor, with the advice and consent of the Mayor, designates one member to serve as Chairperson. Members serve without compensation, but time served is credited to members in the calculation of public employee pension and retirement benefits.

The Authority is managed by a staff headed by an Executive Director and, with regard to major construction, a staff of consultants headed by a consultant functioning as Director of Capital Projects. Both Directors report to the Authority's Board.

Under the terms of an agreement dated February 14, 2003, the Executive Director indicated his intention to resign on March 31, 2003, and end his employment on or about May 30, 2003, following the utilization of accumulated vacation time in accordance with the Authority's personnel policy.

On April 1, 2003, in accordance with the Authority's Consultant Agreement signed on February 21, 2003, the Director of Capital Projects assumed the overall management of the Authority's operations. The contract between the Authority and the Director of Capital Projects, originally signed on March 30, 2001, was amended on February 21, 2003 to include (in addition to the duties and responsibilities of the Director of Capital Projects) the duties and responsibilities of the Executive Director, and it was extended to December 31, 2005.

The amended agreement also includes a change-of-status provision stating that if the Consultant becomes a full-time employee of the Authority, he shall be paid all funds due and unpaid under the contract to date within 30 days of the start of such regular full-time employment, and at the conclusion of the Consultant's employment as an employee of the Authority, it shall pay the Consultant, in a lump sum and within 30 days, the following:

An amount equal to six months adjusted Base Compensation in effect on the date when the Consultant becomes a full-time employee of the Authority; and (2) an amount equal to the difference between the maximum amount to be paid to the Consultant under the terms of this contract to its conclusion and the earnings received by the Consultant while an employee of the Authority; provided that any amount which would otherwise be payable as severance benefits under the terms of the Authority's Personnel Policy, shall be reduced by any amounts paid pursuant to this paragraph.

Audit Scope, Objectives, and Methodology

Our audit, which covered the period July 1, 2001 to March 31, 2003, was conducted in accordance with applicable generally accepted government auditing standards for performance audits. The objectives of the audit were to review and analyze internal controls over the following areas:

- Administrative costs and expenses
- Reserving and leasing of convention center facilities

- Employee compensation and related costs
- Inventory control systems for supplies and equipment
- Collection and depositing of revenue, including a review of accounts receivable
- Update of prior audit results

Our methodology included a review of (a) the reports prepared by the Authority's public accounting firm on the financial statements for the fiscal years ended June 30, 2001 and June 30, 2002 (draft), (b) the Authority's internal accounting controls, and (c) its compliance with applicable laws and regulations. We also assessed the Authority's compliance with its enabling legislation (Chapter 190 of the Acts of 1982, as amended by Chapter 23 of the Acts of 1998) and conducted performance testing to determine the efficiency and effectiveness of the Authority's operations. In addition, we also conducted a follow-up review of the conditions noted in our prior audit (No. 98-1272-3). To accomplish our objectives, we examined Authority accounting records and other related documents, reviewed applicable laws and regulations, and interviewed selected Authority officials and personnel.

AUDIT RESULTS

1. NONCOMPLIANCE WITH COMPETITIVE PROCUREMENT PROCEDURES FOR CONSULTANTS

The Massachusetts Convention Center Authority has adopted policies and procedures for procuring contracts in excess of \$25,000 in accordance with Chapter 30B of the Massachusetts General Laws (the Uniform Procurement Act), which requires formal, advertised competition. However, our review found that the Authority does not always comply with its procurement policies and procedures.

The Authority has entered into consulting contracts with five individuals, essentially forming a consulting team, to manage the major construction projects currently in progress: the Boston Convention and Exhibition Center (BCEC) and the Springfield Civic Center. These contracts were executed between March 30, 2001 and September 24, 2001 and expire upon completion of the projects (on or about April 1, 2005).¹ The amounts to be paid under each contract were determined through negotiations between the Authority and the consultants; the total cost of the contracts is approximately \$3.2 million over the four-year period.

Our review disclosed that the Authority did not conduct a formal competitive search for the individuals retained under these contracts, nor was any formal process completed that justified the selection and negotiation of salary and benefits packages for these contractors.

These contracts provide for the payment of a portion of health, life, and long-term disability insurance and an annual cost-of-living adjustment. In the case of the Director of Capital Projects and the Project Director of BCEC, the contracts provide for incentive compensation of up to 25% and 20%, respectively. All contracts provide, in the base salary, for the payment of vacation leave, and some of the contracts provide for the payment of sick leave.

On March 31, 2001, the Authority's Board authorized the Executive Director to enter into an agreement with an individual, granting him the title of Director of Capital Projects and

¹ The Director of Capital Projects had his contract extended through December 2005 (see page 2).

the responsibility for the overall management of the BCEC and Springfield Civic Center projects. Subsequently, upon the initial recommendation of the Director of Capital Projects, the Authority approved, and in one case amended, four additional contracts for the following functions:

- Project Director of BCEC
- Assistant Director of Development and Finance
- Project Manager of BCEC
- Compliance Officer of Projects

Regarding these contracts, we asked the Authority's General Counsel why the Authority had not followed its own procurement policies and procedures for contracts over \$25,000. According to the General Counsel, "30B does not apply to the Authority. A management decision was made to get a group of people extraordinarily qualified to manage the two large major construction projects in process." The Authority is relying on a provision of the special act of legislature that established the Authority (Chapter 190 of the Acts of 1982, Sections 31-50, as amended): Section 35 of that Act defines the powers of the Authority, including the right "to engage architects, consulting engineers, attorneys, construction, financial, promotional and other experts, superintendents, managers, construction managers and...to fix their compensation."

Although the Authority has the right to hire and compensate consultants, the absence of a formal, competitive process leaves the Authority with inadequate assurance that it has retained the best possible and most cost-effective team to oversee the projects, particularly in this instance where these contractors have critical managerial responsibility and authority over significant Authority matters.

The average annual payments under these consultant contracts (in addition to any benefits) are as follows:

	Base Compensation	Incentive Compensation	Total Compensation
Director of Capital Projects	\$224,000	\$56,000	\$280,000
Project Director of BCEC	\$154,000	\$30,000	\$184,000
Assistant Director Development and Finance	\$127,000	-	\$127,000
Project Manager of BCEC	\$111,000	-	\$111,000
Compliance Officer of Projects	\$ 80,000	-	\$ 80,000

Based on our limited comparison, these amounts are at the higher end of a scale for employee positions with similar duties and responsibilities—for example:

Central Artery/Tunnel Project Director	\$155,000
Executive Director of the Massachusetts Convention Center Authority	\$150,000
Chief Financial Officer of the Massachusetts Convention Center Authority	\$104,000

In addition, it should be noted that these contracts differ from traditional consultant contracts in that they include, in addition to compensation for services, benefit packages which are normally provided to employees (see page 4). We question the appropriateness and necessity of providing such benefits in addition to the compensation, since one of the purposes generally for contracting services is to avoid the payment of benefits.

Recommendation

The Authority should adhere to sound business practices and its own procurement policies and procedures, which are based on Chapter 30B of the General Laws, by conducting a competitive process for the procurement of all consultants.

We disclose in Audit Result No. 2 that the Authority has, to its credit, improved procurement practices relative to other contracted services. These procedures should be implemented for all contracts.

Further, since the position of Executive Director is currently vacant, a similar competitive process should be considered for this critical managerial position. In this way the Authority

should be able to attract and retain the best available candidate at a salary comparable to other public sector employees in similar positions.

Auditee's Response

The Authority's response includes, in part:

- a. A statement that the Authority is not subject to, nor governed by, the provisions of Chapter 30B of the Massachusetts General Laws, but has elected to follow its procedures in making procurements.
- b. A statement that these consultants were retained by the Authority in response to staffing recommendations made by KPMG in February 2001 relating to how the project's administration and management could be improved.
- c. A statement that a precedent contract to the existing contract with the Project Director of BCEC was filed in mid-1999, after a well documented selection process.
- d. An outline of the professional and academic credentials held by the individuals presently under contract to the Authority.
- e. A statement to the effect that the positions of Assistant Director of Development and Finance, Project Manager, and Director of Compliance were all filled after public advertisement and extensive and documented selection processes.

Auditor's Reply

The Authority's response does not dispute our assertion that it does not always follow its own established procedures for procurements. When managing a system of internal controls, management's responsibility is to ensure compliance with established policies and procedures. The Authority's management has in fact established such procedures, however, it chooses when and if to follow them.

While we were presented with public advertisements for the positions of "Manager of Project Finances/Boston – Springfield" and "Compliance Officer", these advertisements were for employees, not independent consultants, and were dated July 7, 8 and 9th 2001. The contract for the Director of Development and Finance was dated July 10, 2001. The Authority was unable to provide us with a file documenting the extent of the interview process in either case.

Further, we are not disputing the need for staff to manage these important capital projects, nor are we disputing the qualifications of the individuals retained for these positions. We are questioning the process the Authority utilized to select and compensate these consultants.

2. PRIOR AUDIT RESULTS RESOLVED

Our prior audit report noted that the Authority had (a) awarded its food and beverage concession agreement for the period ended December 31, 1999 without a competitive process, and selected legal services were also not competitively bid; (b) expended \$267,266 in a buyback vacation program that was not approved by the Personnel Policies Manual; and (c) maintained deficient controls over its fixed-asset inventory.

Our follow-up review found that the Authority has resolved these issues, as follows:

- The Authority entered into a formal agreement, after a competitive process, with Aramark Sports and Entertainment Services, Inc. for a term of 84 months (through December 31, 2007).
- The vacation buyback was administered in accordance with existing policies and procedures. Our review confirmed that the Authority properly administered these policies.
- We performed a physical inspection of selected fixed assets and confirmed that the Authority has implemented proper procedures for physically identifying fixed assets.
- All legal services that the Authority obtained during the audit period were competitively bid.